

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**RICHARD KELTER, individually and as
Trustee of the RICHARD KELTER TRUST
DATED JUNE 30, 2004,**

Plaintiff,

-against-

**APEX EQUITY OPTIONS FUND, LP, APEX
EQUITY MANAGEMENT, LLC, KYLE J.
THOMPSON, CORY H. THOMPSON,
THOMPSON CONSULTING, INC.,
SHERWOOD FINANCIAL, INC.,
E. SHERMAN WARNER, M&K HOLDINGS,
LLC, MICHAEL T. MORLEY, KRYSTIN P.
MORLEY, and WILLOWBEND PROPERTY
COMPANY, LLC,**

Defendants.

ECF Case No. 08 Civ. 02911 (NRB)

**REPORT ON DISCOVERY
PLANNING CONFERENCE**

Pursuant to Rule 26(f) of the Federal Rules of Civil Procedure, the parties, by and through their respective counsel, held their discovery and planning conference by teleconference on July 18, 2008. They submit this as their joint report:

1. Any changes in the timing, form, or requirements of mandatory disclosures under Fed. R. Civ. P. 26(a).

None.

2. Date when mandatory disclosures were or will be made.

The parties agreed to exchange the mandatory disclosures required by Fed. R. Civ. P. 26(a) on August 4, 2008.

3. Subjects on which discovery may be needed.

The parties agree that discovery may be needed on the following subjects:

- a. The identity of the Apex Fund Limited Partners.
- b. Specific identity of those who signed the Confidential Private Placement Memorandum.

- c. Defendants' disclosures and alleged omissions regarding the Apex Fund investments.
- d. Scienter of the part of each defendant.
- e. Loss causation.
- f. Precise amount of damages.
- g. Existence and nature of RICO enterprise.
- h. Evidence of conspiracy to make and accept preferential transfers to certain defendants.
- i. Expert testimony as to such issues as, among others, breach of fiduciary duty and reasonableness of conduct with regard to the Apex Fund investments.
- j. Conduct by third parties that contributed to or caused any losses.

4. **Whether any party will likely be requested to disclose or produce electronically stored information.**

- a. The parties anticipate that the disclosure of electronically stored information will be requested.
- b. The parties agree that disclosure or production will be limited to data reasonably available to the parties in the ordinary course of business.
- c. The parties did not discuss the format and media by which electronic production will be made at the discovery conference, but subsequently agreed to produce electronically stored information on DVD or CD disc.
- d. The parties agreed to take reasonable measures to preserve potentially discoverable data from alteration or destruction in the ordinary course of business or otherwise.
- e. At this time, the parties do not anticipate any other problems that may arise in connection with electronic or computer-based discovery.

5. **Any needed changes in limitations imposed by the Federal Rules of Civil Procedure.**

The parties agree that no changes are needed in the limitations imposed by the Federal Rules of Civil Procedure.

6. **Any Orders, such as protective orders, that should be entered.**

The parties agree that no orders, such as protective orders, need to be entered at this time.

7. **Any objections to initial disclosures on the ground that mandatory disclosures are not appropriate in the circumstances of the action.**

None.

8. **Proposed deadline for joining other parties and amending the pleadings.**

The parties agree that September 18, 2008 shall be the deadline for the joinder of additional parties and amending plaintiff's complaint.

9. **Proposed deadline for completing discovery.**

The parties agree to propose the following deadlines for discovery:

- a. All fact discovery shall be completed by January 15, 2009.
 - b. Plaintiff's expert disclosures shall be made by January 15, 2009.
 - c. Defendants' expert disclosures shall be made by February 15, 2009.
 - d. All expert discovery, including depositions, shall be completed by March 15, 2009.
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Dated: July 29, 2008

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